

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MARILYN JOYCE,

Plaintiff,

v.

CONTINENTAL AIRLINES, INC., et al.,

Defendants.

Civil Action Number: 09-02460

OPINION

HON. WILLIAM J. MARTINI

OPINION

This is a diversity action brought by Plaintiff Marilyn Joyce against Defendants Continental Airlines, Inc. and the Port Authority of New York and New Jersey. Joyce alleges that she was injured in a Continental Airlines terminal in Newark Liberty International Airport, an entity which Joyce asserts is owned and operated by the Port Authority. Before the Court is a report and recommendation by Magistrate Judge Falk dismissing this action *sua sponte* for failure to prosecute this case. No timely objections have been filed. For the reasons elaborated below the Court adopts the report and recommendation, and will **DISMISS** this action.

I. BACKGROUND

This action was filed on August 25, 2009. The Port Authority filed a motion to dismiss. No opposition was filed, and the motion was granted. Joyce's attorney filed a motion to withdraw as an attorney. The attorney asserted that Plaintiff has failed to assist counsel in prosecuting this matter and has not responded to counsel's numerous attempts to contact her. The motion to withdraw was granted. The order granting the attorney's motion was served on Plaintiff by Plaintiff's former counsel. The order directed Plaintiff to appear *pro se* or to have new counsel enter an appearance by May 2, 2011. The order expressly warned Plaintiff that failure to comply may lead to sanctions, including, possibly, the dismissal of this action. Plaintiff did not comply and the Magistrate Judge issued a report and a recommendation to dismiss this action. (Doc. No. 28.)

II. STANDARD OF REVIEW

This Court characterizes the Magistrate Judge's *sua sponte* decision to recommend dismissing this case as akin to action on a motion to dismiss, which is, of course, a dispositive motion. With respect to dispositive motions, the district court must make a *de novo* determination of those portions of the magistrate judge's report to which a litigant has filed an objection. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). More specifically, New Jersey Local Rule 72.1(c)(2) provides that "[s]uch party [seeking review] shall file . . . written objections which shall specifically identify the portions of the . . . recommendations or report to which objection is made and the basis of such objection." N.J. L.R. 72.1(c)(2). Pro forma objections which fail to comply with the local rule will not be considered. *Mersmann v. Continental Airlines*, 335 F. Supp. 2d 544, 547 (D.N.J. 2004).

However, where, as here, no objections are made in regard to a report or parts thereof, the district court will adopt the report and accept the recommendation if it is "satisf[ie]d . . . that there is no clear error on the face of the record." Fed. R. Civ. P. 72 Advisory Committee's Notes (citation omitted); see *Peerless Ins. Co. v. Ambi-Rad, Ltd.*, 2009 WL 790898, at *4 (D.N.J. March 23, 2009) (same).

III. DISCUSSION

The Magistrate Judge issued a thorough, lucid, and well-reasoned report, examining the propriety of dismissal where a Plaintiff willfully abandons her case, and the propriety of dismissal under the Third Circuit's multi-factor balancing test, which has application where a party fails to obey a court order. See *Poullis v. State Farm & Cas. Co.*, F.3d 863 (3d Cir. 1984).

The Court sees no error, much less clear error, with regard to the Magistrate Judge's recitation of the facts, the legal rule applied, or the application of the law to these facts. The Court also notes that Plaintiff was expressly warned that her failure to comply with the Magistrate Judge's order may lead to dismissal. (Doc. No. 26.)

IV. CONCLUSIONS

For the reasons elaborated above, the Court **ADOPTS** the report and recommendation, and **DISMISSES** this action. An appropriate order follows.

DATE: June 30, 2011

s/ William J. Martini
William J. Martini, U.S.D.J.